

LFC Requester:**Aurora Sanchez**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**

Correction **Substitute**

Date January 13, 2016

Bill No: House Bill 30

Sponsor: Kelly K. Fajardo

Agency Code: 305

Short Communication of Certain

Person Writing Tony Long, AAG

Title: Images to Children

Phone: 505/222-9020 **Email** tlong@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

The bill substitutes the word "any" for "the" in the section that deals with sending the child obscene images. The statute currently reads, "...sending the child obscene images of the person's intimate parts..." The change would read, "...sending the child obscene images of any person's intimate parts..."

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This bill addresses a much needed clarification of legislative intent within the plain text of the statute. Under current language of the statute, the State may be required to prove beyond a reasonable doubt that the obscene image of intimate parts sent to a child was in fact an image of the sender's intimate parts -- which may be an impossibility in some cases as a matter of proof. By changing the language to "any" in lieu of "the," the bill criminalizes sending obscene images of intimate parts to a child via an electronic communication device.

A very recent New Mexico Court of Appeals decision in State v. Tufts, 2015-NMCA-075, 355 P.3d 32, 36, cert. granted (June 19, 2015) illustrates a potential loophole in the statute. In Tufts, the defendant removed the SD card from the child victim's cell phone. The defendant then recorded himself nude and masturbating onto the SD card. He then placed the SD card back into the child victim's cell phone. He was charged for violating NMSA § 30-37-3.3. The Court of Appeals overturned the defendant's conviction based on the statutory language. The Court of Appeals accepted the defendant's argument that he never actually "sent" the harmful material to the child victim.

Possible amendments to the bill could be added to address the factual scenario of State v. Tufts to change the language from "sending" to "sending or providing the child with obscene images of any person's intimate parts."

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS